

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

V

AMAZON.COM, INC.

Defendant

Case No. 2:14-cv-01038-JCC

NOTICE OF FACTS RELATING TO THE FTC'S REQUEST FOR RELIEF AND AMAZON.COM, INC'S OFFER OF PROOF

NOTICE OF FACTS RELATING TO RELIEF
Case No. 2:14-cv-01038-JCC

Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, DC 20580
(202) 326-3231

1 Plaintiff Federal Trade Commission (“FTC”) gives notice of facts related to the FTC’s
2 request for relief on its motion for summary judgment:

3 1. On April 26, 2016, the Court granted summary judgment to the FTC on its claim
4 that Amazon.com, Inc. (“Amazon”) has violated Section 5 of the FTC Act by unfairly billing
5 consumers for unauthorized in-app charges. (Dkt. 224 at 21.) The Court invited further briefing
6 on the final amount of monetary relief. The Court specifically held that “continuous unauthorized
7 purchases on First Generation devices” are “relevant injury” for purposes of that calculation. *Id.*
8 at 22.

9 2. The FTC initially approximated monetary relief using transactional data Amazon
10 produced during discovery. (*See* Dkt. 109 and 138 at 28.) That data ran through December
11 2014.¹ (Dkt. 156 and 158 at 4 n.3.) As a result, continuous unauthorized charges on First
12 Generation devices were not reflected in the FTC’s initial approximation of monetary relief.

13 3. The ongoing billing for charges without password entry at price points below \$1
14 on First Generation devices also was not reflected in Amazon’s April 20, 2016 submission,
15 styled as an “offer of proof” (Dkt. 220), which this Court considered in ruling on the FTC’s
16 motion for summary judgment. (Dkt. 224 at 22.) Given the timing of that submission (more than
17 seven weeks after the close of briefing on the FTC’s motion for summary judgment, and on the
18 eve of oral argument on that motion), the FTC was unable to address the submission in briefing
19 or during oral argument.

20 4. The FTC supplements its request for relief based on now-available data and on
21 this Court’s holding that continuous unauthorized charges on First Generation devices should be
22 included in the final amount of monetary relief owing from Amazon’s practices. The FTC makes

23
24 ¹ Amazon generally did not produce to the FTC during discovery requested documents or information dated after
25 December 2014, though Amazon provided certain information from 2015 to support its defenses. (*See, e.g.*, Dkt. 95,
26 Ex. E; Dkt. 168, Exs. A, F.) The FTC’s requests for data included documents sufficient to show “the number of In-
App Charges incurred, revenue for the In-App Charges, [and] number and dollar amount of refunds for In-App
Charges” for apps by month and by price point (FTC’s Request for Production No. 1) and transactional data (FTC’s
Interrogatory No. 2) Amazon was ordered to produce (Dkt. 48).

1 this submission now to give Amazon the opportunity to address such charges in its May 27, 2016
2 supplemental brief.

3 5. Based on data Amazon produced about ongoing charges below \$1 on First
4 Generation devices after the FTC filed its motion for summary judgment, Dkt. 168 and 169, Ex.
5 F, the following charges from 2015 are relevant to this Court's determination of relief:

2015 Revenue for Kids' App Charges Below \$1 on First Generation devices	2015 Refunds for Kids' App Charges Below \$1 on First Generation devices
[REDACTED]	[REDACTED]

9 (See Dkt. 168 and 169, Ex. F at 1.) Applying the FTC's Unauthorized Charge Rate to the
10 revenue for these charges and deducting refunds equals an additional [REDACTED] in monetary
11 relief.

12 6. Contrary to Amazon's representation that it "stopped selling" First Generation
13 devices in August 2012, Dkt. 189 at 6, the devices have been and continue to be sold on
14 Amazon.com, including from "Amazon Warehouse Deals." Decl. of Patrick Eagan-Van Meter
15 (attached hereto), ¶ 4. Consumers accordingly can purchase such devices (including from
16 Amazon's website) as of the date of this filing, and users continue to be able to incur charges
17 below \$1 without express, informed authorization.

18 7. Amazon has not produced data relating to in-app charges on First Generation
19 devices beyond 2015. If Amazon provides such data in its May 27, 2016 supplemental brief, the
20 FTC can reasonably approximate requested relief for 2016 using that data. In the absence of such
21 data, the FTC makes the following reasonable approximation of projected monthly revenue and
22 refunds for First Generation devices in 2016, based on the lowest monthly totals in 2015:

Projected 2016 Monthly Revenue for Charges Below \$1 on First Generation devices	Projected 2016 Monthly Refunds for Charges Below \$1 on First Generation devices
[REDACTED]	[REDACTED]

1 (See Dkt. 168 and 169, Ex. F at 1.) Applying the FTC's Unauthorized Charge Rate to the
2 revenue for these charges and deducting refunds equals an additional [REDACTED] in monetary
3 relief per month. Through April 2016, in combination with the FTC's request for monetary relief
4 to date, the total amount sought equals **\$26,541,207.30**.

5 8. Because these charges are ongoing and the date on which the Court will enter its
6 final order in this case is uncertain, the FTC cannot at this point approximate the total relief
7 owing from charges below \$1 on First Generation devices. The FTC nonetheless requests that
8 this Court consider the above in entering such relief as it deems just and proper at the conclusion
9 of this case.

10 Dated: May 9, 2016

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CERTIFICATE OF SERVICE

I, Jason M. Adler, certify that on May 9, 2016, I electronically filed the foregoing Notice of Facts Relating to the FTC's Request for Relief and Amazon.com, Inc.'s Offer of Proof with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

By: /s/ Jason M. Adler
Jason M. Adler

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